

## Exhibit 3

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January 27, 2020

The Hon. John H. Durham, U.S. Attorney  
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The Hon. Richard Donoghue, U.S. Attorney  
Eastern District of New York  
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Brooklyn, New York 11201  
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The Hon. Michael E. Horowitz, Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW, Suite 4706  
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Re: *Ty Clevenger v. U.S. Department of Justice, et al.*, Civil Action No. 18-CV-01568 (WFK) (LB)

Mr. Durham, Mr. Donoghue and Mr. Horowitz:

I wish to file a criminal complaint regarding false statements made by FBI Section Chief David M. Hardy in two affidavits filed in the FOIA case identified above. I requested FBI records pertaining to Seth Rich, who allegedly was the source of Democratic National Committee emails published by Wikileaks in 2016 (rather than Russian hackers). In the affidavits (attached to the email version of this letter), Mr. Hardy testified that his office conducted a reasonable search, and it found no responsive records.

New evidence proves otherwise, and it appears that Mr. Hardy has perpetrated a fraud on the court. Judicial Watch recently published documents that it obtained in response to a FOIA request for communications between former FBI agent Peter Strzok and former FBI attorney Lisa Page (<https://www.judicialwatch.org/wp-content/uploads/2020/01/JW-v-DOJ-Strzok-Page-Prod-16-00154.pdf>), and I would direct your attention to pages 123-125. In those pages, you will find a heavily-redacted email discussion regarding Mr. Rich. Note that the header on those emails is "Seth Rich."

I defy Mr. Hardy to provide an innocent explanation for his office's failure to produce these emails, and I suspect the misconduct reaches far beyond my specific FOIA request. Several facts are worth noting:

- Mr. Hardy touts the reasonableness of relying on the FBI's Central Records System ("CRS"), but note that CRS does not search the FBI email system. That sort of half-baked, designed-to-fail search methodology would never be tolerated in litigation among private parties, yet it appears to be standard operating procedure at the FBI. And note that when I asked the FBI to search its email systems, it arbitrarily refused.
- Mr. Hardy's staff purportedly searched for "Seth Conrad Rich" but failed to search for "Seth Rich," another tactic designed to exclude responsive records.
- According to Mr. Hardy's affidavit, the only records indexed by CRS are those that are manually designated by FBI personnel. Undoubtedly, FBI personnel know that they can immunize their email communications from FOIA requests simply by omitting the subject matter from the CRS, because Mr. Hardy will subsequently declare (1) that a CRS search is sufficient and (2) there is no need to conduct an email search.

I have previously written to Mr. Durham regarding evidence that the FBI was hiding information about Mr. Rich, and I have attached a December 13, 2019 order issued in *Butowsky v. Folkenflik*, Case No. 4:18-cv-00442-ALM-CMC (E.D. Tex.). Please see pages 23-29 in particular. Finally, I have attached an October 8, 2019 reply in the FOIA case, and it notes a previous occasion wherein Mr. Hardy provided inaccurate information to a court.

It appears that FBI personnel are deliberately hiding records about Seth Rich and deliberately deceiving the court about the reasonableness of their searches for those records. Worse, this sort of bad-faith non-compliance appears to be the norm.

I request that your respective offices investigate to determine whether responsive information has been withheld intentionally, and whether Mr. Hardy knowingly submitted false affidavits to the U.S. District Court for the Eastern District of New York.

Thank you for your consideration.

Respectfully,



Ty Clevenger

cc: The Hon. Lois Bloom, Magistrate Judge  
U.S. District Court, Eastern District of New York  
Ms. Kathleen Mahoney, Asst. U.S. Attorney  
Eastern District of New York  
Mr. Robert Wells, Asst. U.S. Attorney  
Eastern District of Texas